

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 20-71407
v.	:	
	:	Board Case Nos.:
RHINO NORTHWEST LLC	:	19-CA-221309
	:	19-CA-221359
Respondent	:	

REPLY OF THE NATIONAL LABOR RELATIONS BOARD TO
RESPONDENT’S ANSWER TO THE BOARD’S APPLICATION FOR
SUMMARY ENFORCEMENT OF THE BOARD’S ORDER

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (“the Board”), by its Assistant General Counsel, files this reply to the answer of Rhino Northwest LLC (“Rhino”) to the Board’s application for summary entry of a judgment enforcing its order. For the following reasons, the Board submits that Rhino has not presented any valid defenses to the Board’s application and that, accordingly, the Board’s application should be granted.

1. As set forth in the Board’s application, a Board administrative law judge issued a decision finding that Rhino violated the Act in certain respects. Thereafter, Rhino did not file any exceptions with the Board to the judge’s decision and recommended order and, accordingly, the Board adopted it *pro forma*. See Answer at pg. 2 (“Respondent ADMITS that Respondent did not file with the

Board exceptions to the administrative law judge’s decision . . .”) (emphasis in original).

2. Rhino’s acknowledgement that it did not file exceptions makes summary enforcement clearly appropriate in this case. Under the Board’s Rules and Regulations, if no exceptions are filed to an administrative law judge’s recommended decision and order, the Board will adopt that decision and order. 29 C.F.R. §§ 102.46 and 102.48. Further, as a consequence of Rhino having failed to file objections before the Board, Section 10(e) of the Act, 29 U.S.C. 160(e), jurisdictionally bars court review of the Board’s decision and order. *See Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665 (1982). Additionally, as this Court has recognized, a respondent’s failure to file any exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *See, e.g., NLRB v. Nevis Indus.*, 647 F.2d 905, 908 (9th Cir. 1981); *NLRB v. Sheet Metal Workers Int’l Ass’n, Local 16*, 873 F.2d 236, 237 (9th Cir. 1989).

3. Rhino states that the Board’s application for summary enforcement is an unnecessary and improper waste of time and resources for the Court and the parties because, it claims, “it has not resisted or failed to comply with the Board’s order.” Answer p. 1. To the contrary, compliance is a continuing obligation and Rhino’s

compliance obligations have not ceased.¹ Furthermore, the Board's Rules and Regulations provide for the enforcement of the Board's order prior to initiation of compliance proceedings. 29 C.F.R. § 101.14. Thereafter, any compliance issues may be put before the Board pursuant to the Board's Rules and Regulations. 29 C.F.R. § 102.52. This bifurcated procedure has met with court approval. *See Sure-Tan v. NLRB*, 467 U.S. 883, 902 (1984); *NLRB v. Katz's Delicatessen of Houston Street, Inc.*, 80 F.3d 755, 771 (2d Cir. 1996) ("Compliance determinations are routinely made 'after entry of a Board order directing remedial action, or the entry of a court judgment enforcing such [an] order.'").

In any event, it is well settled by the Supreme Court and the courts of appeals that even full compliance with the terms of a Board order is no barrier to enforcement of the order. *See, e.g., NLRB v. Mexia Textile Mills, Inc.*, 339 U.S. 564, 567-568 (1950); *NLRB v. Edgar Spring, Inc.*, 800 F.2d 595, 598 (6th Cir. 1986); *NLRB v. National Car Rental System, Inc.*, 672 F.2d 1182, 1191 (3d Cir. 1982).

¹ For example, the cease-and-desist provisions of the Board's Order in this case contain continuing obligations for Rhino to bargain in good faith and to not interfere with the employees' exercise of their rights under Section 7 of the Act. Thus, an enforced Order from this Court will enable the Board to quickly pursue a contempt action, if issues of Rhino's non-compliance with the Order's continuing obligations later arise.

WHEREFORE, for the reasons stated in the Board's Application and in this Reply, the Board respectfully requests that the Court summarily enter judgment enforcing the Board's Order.

/s/David Habenstreit
David Habenstreit
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Washington, D.C. 20570

Dated in Washington, D.C.
this 11th day of June, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2020, I filed the foregoing reply with the Clerk of the Court for the United States Court of Appeals for Ninth Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/David Habenstreit
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Dated at Washington, D.C.
this 11th day of June, 2020